



9111-14

ADM-9-03:OT:RR:RD:TC
H164155 SK

**DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection**

Cancellation of Bond Subject to Enhanced Bonding Requirements Upon CBP's Acceptance of Qualified Superseding Bond Application

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice announces that U.S. Customs and Border Protection (CBP) will cancel a continuous bond where the liability amount was calculated pursuant to enhanced bonding requirements (EBR bond) upon the agency's acceptance of a qualified superseding bond application. CBP will accept a qualified superseding bond application pursuant to this notice only if posted by an importer who was not a litigant in any of the National Fisheries Institute, Inc. v. United States Bureau of Customs & Border Protection (NFI v. CBP) court cases and who establishes, to CBP's satisfaction, that no contingent liability remains secured by the predecessor EBR bond and that the EBR bond does not cover entries that are subject to a pending protest. The superseding bond must also feature a limit of liability that is calculated using CBP's current bond formula and must be for the same time period covered by the EBR bond. Nothing in this Notice should be construed as applying to importers represented by the plaintiffs in the NFI litigation noted above, as their relief was granted by the Court.

DATES: A superseding bond application, including supporting documentation, must be received by CBP within 90 calendar days from the date the related preceding EBR bond becomes eligible under the conditions set forth in this Notice.

ADDRESSES: Superseding bond applications, including supporting documentation, must be sent either via mail to U.S. Customs and Border Protection, Office of Administration, Revenue Division, ATTN: Bond Team Intech 1, 6650 Telecom Drive, Indianapolis, IN 46278 or via email to Cbp.bondquestions@dhs.gov with a subject line of “Superseding Bond IR#.”

FOR FURTHER INFORMATION CONTACT: Kara Welty, Revenue Division, Office of Administration, Customs and Border Protection, kara.welty@dhs.gov, Tel. (317) 614-4614.

SUPPLEMENTARY INFORMATION:

Background

I. Enhanced Bonding Requirements

In 2004, U.S. Customs and Border Protection (CBP) instituted a policy of reviewing the sufficiency of continuous bonds where the importer’s importing activities involved merchandise subject to antidumping or countervailing duties (AD/CVD). CBP’s review resulted in the imposition of enhanced bonding requirements (EBR) on importers of shrimp subject to AD/CVD. See 71 FR 62276, dated October 24, 2006.

II. Judicial Review

The legality of the enhanced bonding formula was challenged in the NFI v. CBP cases. See Nat’l Fisheries Inst., Inc. v. CBP, 465 F. Supp.2d 1300 (Ct. Int’l Trade 2006); Nat’l Fisheries Inst., Inc. v. CBP, 637 F. Supp.2d 1270 (Ct. Int’l Trade 2009); Nat’l Fisheries Inst., Inc. v. CBP, 714 F. Supp.2d 1231 (Ct. Int’l Trade 2010); and Nat’l Fisheries Inst., Inc. v. CBP, 751 F. Supp.2d 1318 (Ct. Int’l Trade 2010). See http://www.cit.uscourts.gov/slip_op/Slip_op10/10-120.pdf.

In Slip Opinion 10-120, the Court granted equitable relief to importers who were

represented by the plaintiffs in NFI v. CBP (NFI Importers) and who had posted bonds calculated using the enhanced bonding formula (EBR bond). As a consequence of the court's decision, CBP cancelled NFI-Importers' EBR bonds upon their submission of replacement superseding bonds.

III. CBP Policy to Permit Cancellation of EBR Bond Upon Acceptance of Qualified Superseding Bond

CBP has now decided to implement a policy whereby the agency will accept a qualified superseding bond application that meets the conditions described in Section V of this Notice ("superseding" as used in the sense it is used in Slip Op. 10-120, page 6) from any importer who posted an EBR bond but who was not an NFI Importer (non-NFI importer). This policy will be in effect for a period of 90 calendar days from the date that the related preceding EBR bond no longer secures any remaining sum certain or contingent debt (including, but not limited to, unliquidated entries (see 19 U.S.C. 1500) and matters subject to 19 U.S.C. 1592 involving actual or potential loss of revenue. This policy is not applicable to NFI importers whose relief was granted by the Court.

A Non-NFI importer wishing to take advantage of this policy must ensure that CBP's Bond Team Intech 1, within the Office of Administration's Revenue Division, receives a qualified superseding bond application and supporting documentation within this 90 day period. The superseding bond application must be accompanied by supporting documentation that includes a statement as to the date the EBR no longer secured contingent liability, as well as a statement that the EBR does not cover entries that are subject to a pending protest pursuant to 19 U.S.C. 1514 or related regulations.

If CBP accepts a qualified superseding bond, CBP will notify the non-NFI importer by providing a copy of the superseding CBP Form 301 and will cancel (“cancel” as used in the sense it is used in Slip Op. 10-120, at pages 11-13) the related preceding EBR bond. The superseding bond will be clearly annotated to distinguish it from the preceding EBR bond. An EBR bond is not cancelled unless CBP notifies the non-NFI importer that the superseding bond has been approved. CBP will return untimely submissions as well as those that are incomplete or rejected for any other reason, promptly. CBP is not responsible for delays in a non-NFI importer’s receipt of a returned application.

As CBP is not a legal party to the contractual relationship between a surety and a principal, it is noted that the agency cannot assist in matters relating to obtaining a superseding bond.

IV. EBR Bond Conditions

To qualify for cancellation and replacement by a superseding bond pursuant to this policy, an EBR bond:

- Must not secure any remaining sum certain or contingent debt (including, but not limited to, unliquidated entries (see 19 U.S.C. 1500) and matters subject to 19 U.S.C. 1592 involving actual or potential loss of revenue); and
- Must not cover entries that are subject to a pending protest pursuant to 19 U.S.C. 1514 or related regulations.

V. Superseding Bond Conditions

Pursuant to this policy, a qualified superseding bond posted by a non-NFI importer must meet the following conditions:

- A superseding bond must feature a limit of liability in an amount no less than the dollar amount of the continuous importer bond that CBP would have accepted had the EBR

requirement not existed on the bond effective date of the EBR bond. For example, if an EBR bond features a face amount of \$500,000 but would have featured a face amount of \$70,000 but for the EBR requirement, then the superseding bond must feature a face amount of at least \$70,000. A non-NFI importer can determine the correct amount of a superseding bond by multiplying the total of duties, taxes, and fees paid to CBP, for the twelve-month period immediately preceding the effective date of the original EBR, by ten (10) percent and rounding up as appropriate.

- A superseding bond must be for the same time period for which the related preceding EBR bond was in place. For example, if an EBR bond was in effect for a period from March 15, 2004, through April 1, 2005, then the superseding bond, despite its execution date in 2011, must secure entries for March 15, 2004, through April 1, 2005.
- A superseding bond posted pursuant to 19 CFR 113.40 must include the posting of cash or other security for each annual period that the related EBR bond was in effect.
- A superseding bond application, including supporting documentation, must be received by CBP within 90 calendar days from the date that the related preceding EBR bond no longer secures any remaining sum certain or contingent debt (including, but not limited to, unliquidated entries (see 19 U.S.C. 1500) and matters subject to 19 U.S.C. 1592 involving actual or potential loss of revenue).

- A superseding bond application, and supporting documentation, must be sent either via mail to U.S. Customs and Border Protection, Office of Administration, Revenue Division, ATTN: Bond Team Intech 1, 6650 Telecom Drive, Indianapolis, IN 46278 or via email to Cbp.bondquestions@dhs.gov with a subject line of “Superseding Bond IR#.”

Date: May 25, 2012

David V. Aguilar
Acting Commissioner,
U.S. Customs and Border Protection

[FR Doc. 2012-13179 Filed 05/30/2012 at 8:45 am; Publication Date: 05/31/2012]